



filed this Motion for \$9,000 in attorney fees under 42 U.S.C. § 406(b). (Doc. No. 21, p. 3). Upon award of this amount, Plaintiff's counsel agreed to reimburse the previously awarded \$5,400 EAJA fee to Plaintiff. Id. at 2. Defendant neither supports nor opposes the Motion. (Doc. No. 22).

## **II. DISCUSSION**

The Social Security Act provides that a "[w]henever a court renders a judgment favorable to a claimant . . . who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation not in excess of 25 percent of the total of the past due benefits to which claimant is entitled by reason of such judgment." 42 U.S.C. § 406(b). As noted by the Fourth Circuit:

§ 406(b) was designed to control, not to displace, fee agreements between Social Security benefits claimants and their counsel . . . . As long as the agreement does not call for a fee above the statutory ceiling of twenty-five percent of awarded past-due benefits . . . § 406(b) simply instructs a court to review the agreement for reasonableness.

Mudd v. Barnhart, 418 F.3d 424, 428 (4th Cir. 2005). In construing a fee for reasonableness, a court can look towards "the time spent and work performed by counsel, . . . the overall complexity of the case, the lawyering skills necessary to handle it effectively, the risks involved, and the significance of the result achieved in district court." Id. at 428. However, if the Court has already awarded attorney fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), counsel representing the claimant must refund to the claimant the smaller of the fees. See, e.g., Stephens v. Astrue, 565 F.3d 131, 135 (4th Cir. 2009).

Here, Plaintiff and her counsel entered into a contingency fee agreement and Plaintiff agreed to pay 25% of past due benefits to her counsel. (Doc. No. 18-2). The Court finds that the fee requested by Plaintiff's counsel (\$9,000) falls significantly below the amount withheld by Social Security representing 25% of past due benefits for attorney fees (\$17,593.50). Furthermore,


Plaintiff's counsel managed to secure a remand in this Court that later resulted in a substantial award of benefits to the claimant. For these reasons, the Court finds that the requested fee is reasonable.

### **III. CONCLUSION**

IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees under § 406(b) is GRANTED, and an award of attorney's fees in the amount \$9,000 is hereby approved pursuant to 42 U.S.C. § 406(b). IT IS FURTHER ORDERED that upon receipt of the above fee, Plaintiff's counsel will return to the Plaintiff the sum of \$5,400, representing the fee that counsel previously received pursuant to the EAJA, 28 U.S.C. § 2412(d).

IT IS SO ORDERED.

Signed: September 24, 2018

  
Frank D. Whitney  
Chief United States District Judge

